

Hon. Richard Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EVAN JOHNSON, JOSH GRAY, and
DYLAN COOK,

Plaintiffs,

v.

HYTECH POWER, LLC., a Washington
limited liability company; TOM GIBBONS,
THE ESTATE OF S.B. JOSEPH CLARK;
CHASE C. ENGELHART and
MARGARET A. CLARK, Co-Personal
Representatives of the ESTATE OF S.B.
JOSEPH CLARK, Deceased; CHASE C.
ENGELHART, individually; THOMAS
GIBBONS, individually and his marital
community with JANE DOE GIBBONS, his
spouse; AVIATION PARTNERS, INC., a
Washington corporation; and REGENCE
BLUESHIELD, a Washington
miscellaneous and mutual corporation,

Defendants.

NO. 2:20-cv-01676-RAJ

MOTION TO AMEND COMPLAINT

(CLERK'S ACTION REQUIRED)

Noting Date: April 23, 2021

I. RELIEF REQUESTED

Plaintiffs Evan Johnson, Josh Gray, and Dylan Cook (collectively “Plaintiffs”) request entry of an order granting leave to file an Amended Complaint (“Amended Complaint”) pursuant to Fed. R. Civ. P. 15(a) and LCR 15 in order to amend the parties identified as the administrator or sponsor of the medical benefits insurance plan related to the claims made by the Plaintiffs.

A redline of Plaintiffs’ proposed Amended Complaint is attached to the Declaration of Sean V. Small at *Exhibit A* and a clean version is attached at *Exhibit B*.

II. STATEMENT OF FACTS

A. Claims in Complaint

This is an action for unpaid wages that are currently due and owing to Evan Johnson, wrongful denial of coverage under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), COBRA notice violations, and a claim of attorney’s fees under ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1).

All of the Plaintiffs were employees of HyTech Power, LLC (“HyTech”) and enrolled in a medical benefits plan (“Plan”) through HyTech as the employer. Small Decl. ¶ 4. The Plan was contracted through Regence BlueShield, who is currently a defendant in this matter and identified by previous counsel for Plaintiffs as the Plan Administrator within the meaning of 29 U.S.C. § 1002(16).

However, after reviewing Regence BlueShield and conducting further investigation, it appears that Regence BlueShield was not the Plan Administrator or Sponsor, and as such, Plaintiffs seek leave to identify the correct parties. *Id.* ¶ 5.

1 **B. Amended Complaint**

2 Regence BlueShield represented in its Motion to Dismiss that the Plan identified that the
3 Regence BlueShield medical coverage contract was entered into with Aviation Partners Boeing
4 Winglets II, LLC, (“APB Winglets II”). However, after a reasonable search, the Plaintiffs were
5 unable to find any formation or registration for an entity called Aviation Partners Boeing Winglets
6 II, LLC. *Id.* ¶ 6.

7
8 Counsel for Plaintiffs requested that HyTech, as the employer, identify who the Plan Sponsor
9 and Administrator was; however, at this time, neither the Plaintiffs nor the Defendants are able to
10 clearly identify the Plan “administrator” or “sponsor” within the meaning of 29 U.S.C. § 1002(16).
11 *Id.* ¶ 7.

12
13 While additional discovery is required, Plaintiffs assert in good faith that Aviation Partners,
14 Inc., a Washington corporation, (“API”), APB Winglets Company, LLC, a foreign limited liability
15 company, doing business as Aviation Partners Boeing (“APB”), HyTech (as the Plaintiffs’ employer),
16 or APB Winglets II (as some outside board or committee entered into by multiple employers) may
17 be the Plan “administrator” or “sponsor” within the meaning of 29 U.S.C. § 1002(16). *Id.* ¶ 8.

18
19 The Plaintiffs’ claims are partially based on the fact that the Plan Administrator or Sponsor
20 failed to give notice and that Plaintiffs were denied medical coverage as permitted by COBRA due
21 to the failure to receive timely notice. The Plaintiffs therefore seek to amend the Complaint to add
22 APB and APB Winglets II as Defendants in this matter.
23
24
25

1 **III. ISSUE PRESENTED**

2 Whether the Court grant Plaintiffs leave to amend the Complaint to identify the
3 potentially liable parties, when doing so is consistent with Fed. R. Civ. P. 15(a) and
4 LCR 15?

5 **ANSWER: YES**

6 **IV. EVIDENCE RELIED UPON**

7 Plaintiffs rely upon the files and records herein, including *Exhibits A-B*, the Amended
8 Complaint, submitted with this motion in accordance with LCR 15.

9 **V. LEGAL AUTHORITY**

10 **A. Leave to Amend Shall be Freely Given When Justice So Requires.**

11 Pursuant to Fed. R. Civ. P. 15(a), “[a] party may amend the party's pleading once as a matter
12 of course at any time before a responsive pleading is served.” Otherwise, the party “may amend the
13 party's pleading only by leave of court or by written consent of the adverse party.” *Id.* Leave to
14 amend “shall be freely given when justice so requires,” and “this policy is to be applied with extreme
15 liberality.” *Id.*; *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). After
16 a responsive pleading has been filed, “leave to amend should be granted unless amendment would
17 cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay.”
18 *Martinez v. Newport Beach City*, 125 F.3d 777, 786 (9th Cir. 1997).

19 Unless undue prejudice to the opposing party will result, a trial judge should ordinarily permit
20 a party to amend its complaint.” *Duhn Oil Tool, Inc. v. Cooper Cameron Corp.*, 609 F.Supp.2d 1090,
21 1092 (E.D.Cal. 2009) (quoting *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973)).
22 Prejudice is the touchstone of the inquiry whether a motion to amend should be granted under Rule
23
24
25

1 15(a). *Id.* at 1092–93 (quoting *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th
 2 Cir.2003)). Absent prejudice or a strong showing of any of the remaining Rule 15(a) factors, there
 3 exists a presumption under Rule 15(a) in favor of granting leave to amend. *Id.* Prejudice exists where
 4 amendment will significantly hinder a defendant's ability to defend against the plaintiff's claims, as
 5 in cases where the defendant has no notice, discovery has already been completed, or when the
 6 amendment will require re-litigation of significant issues. *See Ascon Props., Inc. v. Mobil Oil Co.*,
 7 866 F.2d 1149, 1161 (9th Cir.1989).
 8
 9

10 Justice requires that the Plaintiffs be permitted to amend the Complaint as the Plaintiffs have
 11 just recently identified new parties who are relevant and to the matters being litigated and potentially
 12 liable for the harm. There would be no prejudice or unfair surprise to Defendants in allowing the
 13 proposed amendment to the Plaintiffs' Complaint. The trial date and discovery cut off have not yet
 14 been set and there currently is a pending motion to dismiss by Regence BlueShield that requests it be
 15 dismissed from this matter. The proposed changes in the Amended Complaint are not expanding the
 16 claims pled by the Plaintiffs and the Defendants can suffer no prejudice.
 17
 18

19 The Defendants are all on notice that there is an issue identifying the Plan Administrator or
 20 Sponsor, and they will have an opportunity to respond to the Amended Complaint and prepare to
 21 defend the same. Further, this Court has stricken the previous discovery conference deadlines until
 22 Regence BlueShield's Motion to Dismiss is heard and any new parties added to this matter will have
 23 sufficient time to respond and defend against the claims asserted.
 24
 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VI. PROPOSED ORDER

A proposed Order Granting Leave to Amend Complaint is submitted with this motion.

DATED this 8th day of April, 2021.

LASHER HOLZAPFEL SPERRY & EBBERSON
PLLC

/s/ Sean V. Small

/s/ Paul J. Spadafora

By _____
Sean V. Small, WSBA #37018
Paul J. Spadafora, WSBA #49777
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2021, I caused the foregoing pleading to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel:

Alexander A Baehr
SUMMIT LAW GROUP
315 5TH AVE S
STE 1000
SEATTLE, WA 98104
Email: alexb@summitlaw.com

Christopher T Wion
SUMMIT LAW GROUP
315 5TH AVE S
STE 1000
SEATTLE, WA 98104
Email: chrisw@summitlaw.com

Bruce W Leaverton
KARR TUTTLE CAMPBELL
701 FIFTH AVE
STE 3300
SEATTLE, WA 98104
Email: bleaverton@karrtuttle.com

Daniel T Hagen
KARR TUTTLE CAMPBELL
701 FIFTH AVE
STE 3300
SEATTLE, WA 98104
Email: dhagen@karrtuttle.com

Nicholas Peter Gellert
PERKINS COIE (SEA)
1201 3RD AVE STE 4900
SEATTLE, WA 98101-3099

1 NGellert@perkinscoie.com

2 Deborah Joyce Phillips
3 PERKINS COIE (SEA)
4 1201 3RD AVE STE 4900
5 SEATTLE, WA 98101-3099
6 djphillips@perkinscoie.com

7 Robert Joseph Cadranell, II
8 WESTERN WASHINGTON LAW GROUP PLLC
9 PO BOX 468
10 SNOHOMISH, WA 98291
11 Robert@westwalaw.com

12 Dennis J. McGlothin
13 WESTERN WASHINGTON LAW GROUP PLLC
14 PO BOX 468
15 SNOHOMISH, WA 98291
16 dennis@westwalaw.com

17 Mark A Bailey
18 KARR TUTTLE CAMPBELL
19 701 FIFTH AVE
20 STE 3300
21 SEATTLE, WA 98104
22 Email: mbailey@karrtuttle.com

23 Michael M. Feinberg
24 KARR TUTTLE CAMPBELL
25 701 FIFTH AVE
STE 3300
SEATTLE, WA 98104
Email: mfeinberg@karrtuttle.com

Bryan C Taylor
BAKER & HOSTETLER LLP
1420 FIFTH AVE
PO BOX 91302
STE 4200
SEATTLE, WA 98111-9402

1 Email: btaylor@bakerlaw.com

2 Carolyn Robbs Bilanko
3 BAKER HOSTETLER LLP (SEA)
4 999 THIRD AVENUE
5 SUITE 3900
6 SEATTLE, WA 98104
7 Email: cbilanko@bakerlaw.com

8 Douglas W Greene
9 BAKER HOSTETLER LLP (SEA)
10 999 THIRD AVENUE
11 SUITE 3900
12 SEATTLE, WA 98104
13 Email: dgreene@bakerlaw.com

14 James Raymond Morrison
15 BAKER HOSTETLER LLP (SEA)
16 999 THIRD AVENUE
17 SUITE 3900
18 SEATTLE, WA 98104
19 Email: jmorrison@bakerlaw.com

20 Maren Roxanne Norton
21 STOEL RIVES (WA)
22 600 UNIVERSITY ST STE 3600
23 SEATTLE, WA 98101-3197
24 Email: maren.norton@stoel.com

25 DATED this 8th day of April, 2021 at Seattle Washington

/s/ Ellen Krachunis

Ellen Krachunis
Legal Assistant